



U.S. Department of Justice

Environment and Natural Resources Division

LJG:AJB: 90-11-6-05699

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November 19, 1999

BY FACSIMILE AND REGULAR MAIL

**CONFIDENTIAL
FOR SETTLEMENT ONLY**

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Linda R. Shaw, Esq.
Alan J. Knauf, Esq.
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12 Scenery Road
Pittsburgh, Pennsylvania 15221
(412) 731-3970

Re: Demand and Claim Letter for Alleged CERCLA Response Costs

Dear Counsel:

This letter responds to that portion of your August 24, 1999 letter to Ms. Mary Beth Ward (of the United States Department of Justice) demanding reimbursement under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601 *et seq.*, for certain costs allegedly incurred by Mr. Syms, other members of his family, and the Somerset Group, Inc. (collectively "Syms") in connection with certain property in Western New York State (the "Site"). Because only "necessary costs of response" within the meaning of 42 U.S.C. § 9607(a)(4)(B) are recoverable in a CERCLA contribution action, see Key Tronics Corp. v. United States, 511 U.S. 809, 811 (1994), based on your letter, we see no reason to enter discussions regarding settlement of Syms' CERCLA response costs claim.

Syms' alleged costs identified in your letter are primarily "administrative oversight" costs and costs of gathering information. With respect to the alleged "administrative oversight" costs, costs incurred by a private party overseeing a government cleanup are not recoverable: such costs are not "costs of response." Moreover, where the government is conducting a cleanup, oversight by a private party is unnecessarily duplicative of the oversight of the governmental entities Congress charged with administering CERCLA, and therefore is not "necessary." Because none of the cases cited in your letter to support the assertion that Syms' "administrative oversight" costs are recoverable involved claims by private parties to recover costs of overseeing cleanup activities by governmental entities, those cases are inapposite.

*Fred B.
Bill K.*

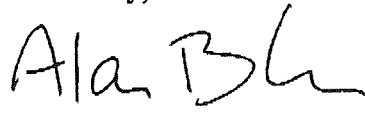
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With respect to Syms' alleged costs of gathering information about historic activities at the Site, there is no evidence that these costs are recoverable either. Except in very narrow circumstances -- not demonstrated here -- costs of identifying and providing information to governmental entities performing cleanup activities are not recoverable under CERCLA. See, e.g., Key Tronics, 511 U.S. at 820-21. In particular, you identify no specific information so closely tied to any cleanup activity that it constitutes a necessary response cost. Rather, you simply assert that substantial costs were incurred attempting to identify information, which you do not describe, and providing that information to the Corps. Therefore, no basis exists for Syms' assertion that recoverable costs were incurred in gathering any Site-related information. In sum, we do not believe that your letter demonstrates that Syms' alleged costs were "necessary costs of response" and therefore are recoverable under CERCLA.

We also take this opportunity to note that we forwarded your August 24, 1999, October 14, 1999, and October 27, 1999 letters to the United States Army Corps of Engineers for a response. Any further inquiries concerning work at the Site should be directed to Michelle Barczak, Assistant District Counsel, Buffalo District, U.S. Army Corps of Engineers. Any further inquiries concerning your claim under the Federal Tort Claims Act should be directed to the United States Army Claims Service at Fort Meade, Maryland.

Sincerely,



Alan Birnbaum, Attorney
Environmental Defense Section